SUPREME COURT, U. S.

FILED

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JOHN F. DAVIS, CLERK

No. 405

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1967

LEROY POWELL,

Appellant

vs.

THE STATE OF TEXAS,

Appellee

On Appeal From the County Court at Law No. 1 of Travis County, Texas

---

PETITION FOR REHEARING

BYRD, DAVIS, EISENBERG & CLARK
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Austin, Texas 78701

July 1968

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PETITION FOR REHEARING

Appellant prays that the Court grant rehearing of its judgment of June 17, 1968 affirming Appellant's conviction for intoxication in a public place under Texas Penal Code Art. 477 and that the case be re-assigned for oral argument for the reasons set forth below.

ARGUMENT

1. The judgment of the Court was supported by

three opinions, none of which reflected the views of a majority of the Court. It has resulted in widespread confusion throughout the country concerning the liability of chronic alcoholics to prosecution for public intoxication.

Public intoxication is the single most important cause of arrest and incarceration in the country today. The vast majority of persons arrested for public intoxication are indigent alcoholics. Just and efficient law enforcement requires that a clear rule of law be enunciated by the Court. Uncertainty about the meaning of the Court's judgment, and of the four opinions delivered, will hamper both law enforcement and public health approaches to the problem of intoxication and alcoholism until the issue is clearly resolved.

2. Uncertainty and confusion about the meaning and future application of the Court's judgment may prevail for many years unless rehearing is granted. Although public intoxication has for years been the leading cause of arrest and incarceration in this country, this is the first such case ever to be heard by the Court. Derelict alcoholics, who are most often arrested under the drunkenness statutes, are very rarely represented by legal counsel. A court reporter is almost never present. Traditional legal procedures are very seldom applied in these cases. Thus it is extremely difficult to compile the type of record that is necessary for an appeal.

3. Three major points considered important, if not controlling, by the three opinions supporting the judgment of the Court were not the subject of detailed briefing or oral argument by Appellant, because they were not at the time considered to be of major impor-

tance to the issues raised: (a) Appellant's ability to confine his drunkenness to his home; (b) the current status of knowledge about treatment of alcoholism; and (c) the current availability of treatment for alcoholism in this country. Because these points were inadequately briefed and argued, the Court was not apprised of several significant facts that might substantially affect the outcome of the case.

CONCLUSION

For the foregoing reasons Appellant respectfully prays that the Court grant rehearing and reassign the case for oral argument.

Respectfully submitted,
BYRD, DAVIS, EISENBERG
& CLARK
DON L. DAVIS
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By ----------
Attorneys for Appellant

CERTIFICATE OF COUNSEL

I hereby certify that this Petition for Rehearing is presented in good faith and not for purposes of delay.

TOM H. DAVIS

July 1968

PROOF OF SERVICE

I, Tom H. Davis, one of the attorneys for Leroy Powell, Appellant herein, depose and say that on the ____ day of July, 1968, I served a copy of the above and foregoing PETITION FOR REHEARING in the above styled and numbered cause on the State of Texas, Appellee herein, by delivering the same to the receptionist in the offices of Mr. Crawford Martin, Esquire, Attorney General of the State of Texas, Supreme Court Building, Austin, Texas, counsel of record for Appellee.

TOM H. DAVIS

Subscribed and sworn to before me, at Austin, Texas, this ____ day of July, 1968.

Notary Public in and for Travis County, Texas